NOTES ON SOME INTERESTING WILLS.

IN treating of this subject no attempt is made to deal with wills analytically or with much technicality. Rather is it the writer's aim to call attention briefly to some wills, ancient or modern, which stand out from the great mass for one reason or another. It would be easy to enlarge this into a treatise on the general theories of will-making; of the customs of different times and localities which sanctioned this or that form,—of nuncupative wills, holographic wills, and the secret or mystic testament provided for by the Louisiana Code,[1] which is sealed up by the testator and, so sealed, delivered by him to a notary in presence of seven witnesses, all of whom, and the notary, write their names on the envelope. But it is not the process of will-making which we are to consider; we are simply to note some unusual specimens of wills which have been made.

A will is popularly defined[2] as "the expressed wish with regard to the disposal of one's property after death," or in the more technical language of the law-writers, "a will or testament is a lawful voluntary disposition of property, to a competent donee, by anyone competent, and to take effect upon the death of the testator, unless sooner revoked." As we use it, the term "will" covers both the old English will, which disposed only of realty, and the *testamentum* of the Roman law which transferred personal property at death.

The many ways in which testators have twisted their plans, or had them thwarted by the Courts or by Fate, have given writers much material for discussion. HAZLITT in "TABLE TALK" says, "Few things show the human character in a more ridiculous light than the circumstance of will-making. It is the latest opportunity we have of exercising the natural perversity of the disposition, and we take care to make good use of it. This last act of our lives seldom belies the former tenor of them, for stupidity, caprice and unmeaning spite." Again he says, "An old man is twice a child; the dying man becomes the property of his family. He has no choice left, and his voluntary power is merged in old laws and prescriptive usages. The property we have derived from our kindred reverts tacitly to them: and not to let it take its course, is a sort of violence done to nature as well as custom. The idea of property, of something in common, does not mix cordially with friendship, but is inseparable from near relationship. We owe a return in kind, when

[1] La. Code (1900) § 1584.
[2] Century Dic.

we feel no obligation for a favor; and consign our possessions to our next of kin as mechanically as we lean our heads on the pillow and go out of this world in the same state of stupid amazement that ends where we came into it."

SHAKESPEARE did not deal much with wills; in the "MERCHANT OF VENICE" we find PORTIA restricted, in choosing a husband, by the will of her dead father,—a rather remarkable provision if we are to suppose it sanctioned by Lord BACON—and in one or two other places allusions to wills appear, but nothing of much interest. Don QUIXOTE, upon feeling the approach of death, dictated his will to a notary; it contains little of note except his charge that if his niece be inclined to marry "it shall be only to a man who, upon strict enquiry, shall be found to know nothing of books of chivalry"; if he do know such books, and the niece notwithstanding will marry him, she forfeits all bequests.

DICKENS, George ELIOT, TROLLOPE, Charles READE, Rider HAGGARD and STIMSON, all have touched upon wills, too, but without much that is noteworthy in the text of the instruments. They are part of the scenery, usually, although the last two deal with wills in a sensational way. We will recall HAGGARD'S flight of imagination in "MR. MEESON'S WILL" when a shipwreck sets the beautiful heroine, and a man who is her lover's enemy, companions on a desert island; he, when about to die, becomes remorseful and makes a will, tattooing it across the young dame's back. Needless to say, it was approved by the court upon profert. STIMSON, in the "POSTHUMOUS JEST OF THE LATE JOHN AUSTIN," works out a pretty love story through a sealed codicil only to be opened on certain contingencies.

Hardly less curious than "MR. MEESON'S WILL" are reported instances of a will chalked by a man on a corn-bin, and of one inscribed on a bed-post; both corn-bin and bed-post are said to be filed in Doctors' Commons, London.

Of whimsical wills of modern times, we may note Jeremy BENTHAM'S,[3] which bequeathed his body to a hospital with instructions that it should be embalmed and his head preserved entire, and that he should,—when thus treated,—preside at the meetings of the hospital directors, and be present at banquets of his old friends. Whether his bones ever presided at directors' meetings is not recorded, but his body was kept in the hospital museum for many years. Even more extraordinary was that will of Solomon SANBORN,[4] of Med-

[3] XV Green Bag, p. 430 (1903). Bentham's body is now in University College, London. XIII Green Bag, 569.

[4] XV Green Bag, 432.

ford, Massachusetts, who left his body to Professor AGASSIZ and Oliver Wendell HOLMES, to be by them prepared and placed in the anatomical museum of Harvard, after having two drumheads made of his skin. Upon one was to be inscribed Alexander POPE'S "UNIVERSAL PRAYER" and on the other the Declaration of Independence. These heads were to be presented to the testator's friend, the drummer of Cohasset, but on condition that on June 17th, each year, the drummer should beat "on the drumheads at the foot of Bunker Hill the spirit-stirring strains of Yankee Doodle."

Among eccentric restrictions some may class that of Lewis MORRIS of New York, who declared, "It is my desire that my son, Gouverneur MORRIS may have the best education that is to be held in England or America, but my express will and directions are that he be never sent for the purpose to the colony of Connecticut, lest he should imbibe in his youth that low craft and cunning so incident to the people of that country, which is so interwoven in their constitutions that all their art cannot disguise it from the world, though many of them, under the sanctified garb of religion, have endeavored to impose upon the world for honest men." As Lewis MORRIS, the testator, was himself graduated at Yale, it is fair to assume that he had kicked against the pricks to his discomfort. His will was dated 1760.[5]

Edward Wortley MONTAGUE was a brilliant but flippant and depraved man, and showed his characteristics in his will, which I quote in part. After some bequests, "to my noble and worthy relation, the Earl of ———," he goes on, "I do not give his lordship any further part of my property because the best part of that he has contrived to take already. Item, to Sir Francis ————, I give one word of mine, because he has never had the good fortune to keep his own. Item, to Lord ———, I give nothing, because I know he'll bestow it on the poor. Item, to ———, the author, for putting me in his travels, I give five shillings for his wit, undeterred by the charge of extravagance, since friends who have read his book consider five shillings too much. Item, to Sir Robert WALPOLE, I leave my political opinions, never doubting he can turn them into cash, who has always found such an excellent market in which to change his own. Item, my cast-off habit of swearing oaths, I give to Sir Leopold D— in consideration that no oaths have ever been able to find him yet." After reading this we are scarcely surprised to learn that the brilliant Lady Mary Wortley MONTAGUE had disinherited the testator, who was her son.

[5] XIII Green Bag, 570.

We could go on almost ad infinitum in noting peculiarities about men who made wills giving property to those relations who wore no moustaches, about others who seized upon will-making as an opportunity to say spiteful things[5a] of their wives or friends, knowing there would be no chance for an answer, and about still others who have left, in the aggregate, vast sums for the care of horses, dogs, cats, parrots or other pets. Many, also, have jested in a cynical way—as in the case of a maiden lady of fifty, who disliked theatricals, and who was horrified by a bequest from a friend on condition that she obtain an engagement at a theatre and perform there one whole week;[6] or the instance of the old bachelor who left all his property to three ladies who had refused his offers of marriage, his will stating that he made them a gift because, "to them, I owe all my earthly happiness." But it would be profitless to multiply examples of this kind.

It might be added, however, that these examples of peculiarities are not confined to English or American testators. Among French wills noted by investigators[7] is found one, whose testator, a Frenchman, declared the French to be a nation of dastards and fools, and for that reason devised his entire fortune to the poor of London, and directed that his body be thrown into the sea a mile from the English coast. On contest a French Court declined to declare him insane. Another Frenchman directed that a new cooking recipe be pasted on his tomb every day; still another, who was a lawyer, left 200,000 francs to a lunatic asylum, declaring that many of his clients who paid him should have been inmates. One who was an enthusiastic card-player left to some of his card-playing friends, a legacy of a goodly sum on condition that they place a deck of cards in his coffin and stop on the way to his grave to have a quiet glass of wine at a favorite cabaret. Another left his estate to six nephews and nieces on condition that each nephew marry a woman named Antoine, and each niece a man named Anton.[8] Just after the Franco-Prussian war a Capuchin monk, noted for his charity, thus bequeathed[9] his entire property, consisting of—breviary, frock, cord, a volume of M. THIERS and a wallet—"First, to the Abbe MICHAUD, my breviary, because he does not know his own; secondly to M. Jules

[5a] This is not confined to men. In the Surrogate's Court in New York a woman's will was filed that had this provision: "Should Mrs. S. or any of her family attempt to approach me in any way, or to attend my funeral, I distinctly forbid it. I would not wish to be defiled by the presence of such black-hearted specimens of vile ingratitude."

[6] Harris, Ancient, etc., Wills, p. 162.

[7] X Green Bag, 162.

[8] Harris, p. 178.

[9] XIII Green Bag, 570.

FAVRE, my frock, to hide his shame; thirdly, to M. GAMBETTA, my cord, which will one day prove useful around his neck; fourthly, to M. THIERS, his own work, that he may read it over again; and fifthly, to France my wallet, because she may shortly have occasion to collect alms."

Breaking away from these rather abnormal developments in will-making, it may be of some profit to consider a few which are of historical interest. Whether anything has been found among the relics of ante-glacial civilization recently unearthed in France which would indicate that the right to dispose of property at death was recognized 50,000 B. C., has not been published. Within the past twenty-five years, however, a will has been found in Egypt that was made in the Fourth Dynasty (B. C. 2850).[9a] Others, of the time of AMENEMHAT III. (about 2,000 B. C.), were witnessed by two scribes, with attestation clauses closely resembling those now in use.[10] In 1902 the explorers for the French government found in Persia a stone monument on which was a copy of the code of HAMMURABI, King of Babylon, B. C. 2285, in which full provisions are made for both testate and intestate succession.[11] Wills were in use among the Hebrews too, as ABRAHAM willed his whole estate to his son ISAAC.[12]

Among the Greeks we find LUCIAN speaking of the will of EUDAMIDAS of Corinth. He was on terms of intimate friendship with two men, ANTHAEUS and CHARIXENES, and on his deathbed made this rather remarkable will:

"I bequeath to ANTHAEUS my mother to support, and I pray him to have a tender care of her declining years. I bequeath to CHARIXINES my daughter to marry, and to give her to that end the best portion he can afford. Should either happen to die I beg the other to undertake both charges." CHARIXENES died within five days after EUDAMIDAS, and the other legatee undertook both charges.

PLATO and ARISTOTLE left simple wills. VIRGIL, it is said,[13] by his will (made 10 B. C.), ordered the AENEID to be burned, but his executors having assured him that AUGUSTUS would never consent to this, he then directed that his verses should be published exactly as they were left, even if he had not completed some of them. It was by command of this will that his body was buried near the

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[9a] Breasted: History of Egypt, p. 82.

[10] 24 Irish Law Times, p. 223.

[11] Rood on Wills, § 124; Also 46 Amer. Law Rev. 648.

[12] 21 Genesis 10-14.

[13] Harris, p. 16.

road between Naples and Pozzouli, where one gets the best view of the Bay of Naples, with Vesuvius on the far side.

PETRARCH, who died about 1374 A. D., gave much thought to his burial place and by his will designates in different cities the particular spots he would choose for burial, providing he died in one of those named, which included Padua, Venice, Milan, Rome, and Parma. His personal belongings are carefully enumerated and divided amongst his friends; BOCCACCIO was bequeathed 200 gold florins of Florence to buy a winter robe suitable for his studious vigils.

A codicil to the will of COLUMBUS is preserved in Genoa, but the instrument itself is lost. Martin LUTHER'S is the subject of much dispute. Those of KATHERINE of Aragon, MARY, Queen of Scots, RABELAIS, and Hans HOLBEIN, the painter, are interesting only because of their makers, as they, together with most royal and distinguished personages, had much the same notions as common clay when it came to the disposal of estates.

The oldest Saxon-English will[14] on record is that of ALFRED the Great, in the original Saxon, which was recorded in Winchester about A. D. 1032. It says nothing of the Crown, giving lands and moneys to children and other relations, and is said to have nothing in it to distinguish it from that of a wealthy alderman. Of the other Kings of England, many of those early in the list were nuncupative—this is true of WILLIAM the Conqueror, WILLIAM Rufus, HENRY I, RICHARD I and others. Those which were written were usually lengthy testaments in Latin. That of EDWARD, the Black Prince, shows evidences of mature deliberation, and covers his epitaph, which was of fourteen lines of his own composition. He, by the way, was curiously rich in beds, of which he gave three to his son RICHARD, "namely the blue bed with ostrich plumes, the bed of red which is quite new, and a great bed embroidered with angels."—HENRY IV's will is noted as the first written throughout in English. As it is dated January, A.D. 1408,—only eight years after the death of CHAUCER—the language was just becoming fixed, and Norman-French was still the language of the courts.

Amongst these early wills of English people that of Lady Alice WEST,[15] dated July, 1395, A. D., and proved that same year, challenges notice because she bequeaths "to Johane my daughter, my sone is wyf, a masse book and all the bokes that I have of latyn,

[14] Green Bag, Vol. XII, p. 64.
[15] Harris, p. 30.
[16] Harris, p. 439.

englisch and frencsh, out take the forsayd matyns book that is bequeath to Thomas my sone." As this was more than seventy-five years before the first book was printed in England, it would be interesting to know what "bokes" were included in this library.

Of early American wills perhaps that of Stephen HOPKINS, who was one of the "Mayflower" importation, and who died at Plymouth, in June, 1644, may stand as a fair example. Quoted in part it is "The sixt of June 1644 I Stephen HOPKINS of Plymouth in New England being weake yet in good and perfect memory blessed be God yet considering the fraile estate of all men I do ordaine and make this to be my last will and testament in manner and forme following. . . . I do bequeath by this will to my sonn Giles HOPKINS my great bull which is now in the hands of Mris WARREN. Also I do give to Stephen HOPKINS my sonn Giles his sonn twenty shillings in Mris WARRENS hands for the hire of the said Bull— Also I give unto my daughter Deborah HOPKINS the brodhorned black cowe and her calf, and also the cow called Motley" and so on, including the disposition of a "Curld Cowe" and "an yearlinge heiffer without a tayle,"—winding up with a gift to each of his four daughters of "four silver spoons."

George WASHINGTON'S will has been made familiar by its repetition in various biographies; it is long and for the most part of little instructive value, except as bearing on WASHINGTON'S character. One clause in it recites "That as it has always been a source of serious regret with me to see the youth of these United States sent to Foreign Countries for the purpose of Education, often before their minds were formed,—contracting too frequently not only habits of dissipation and extravagance, but principles unfriendly to Republican Government, and to the true and genuine liberties of mankind, which thereafter are rarely overcome"; for these reasons, and others similar, the testator makes a bequest towards the endowment of a University to be established in the District of Columbia under the auspices of the Federal Government.

Patrick HENRY[18] gave his wife the bulk of his property and full power over his six sons, but ended by revoking all provisions in her favor if she married again, which she accordingly did. JEFFERSON'S principal conundrum was how to provide for his daughter and her family without making gifts vulnerable to attacks from creditors of his son-in-law, Thomas M. RANDOLPH, which he did by a simple trust. Thomas PAINE commends his soul to his God, a disposition

[18] Harris, p. 382.

which must have startled some who interpreted his "Age of Reason" as pure atheism.

Chief Justice MARSHALL'S[20] will was probated in Richmond, Virginia, in July, 1835, and is wholly in his handwriting, on two sheets of paper. In effect it is a common-sense division equally between his daughter and his five sons,—his wife having died several years before. The only striking thing about it is its evidence of his devotion to the memory of his wife; he makes a bequest to one of her friends "as a token of my wife's gratitude for long and valuable attentions," and a gift to his daughter, at his wife's request, saying, "my daughter will never forget that this is the gift of the best and most affectionate of mothers."

All of the foregoing are mentioned more as curiosities, or because of the personality of the makers, than because they are instructive or noteworthy from a technical test.

As might be expected, when we reach Benjamin FRANKLIN we find a departure from the ordinary in his posthumous plans just as we do in those of his lifetime. It is a codicil, made in June, 1790 (a month before he died), which has caused most comment, and has been attacked in court. This is as follows: "I have considered that, among artisans good apprentices are most likely to make good citizens, and having myself been assisted to set up my business in Philadelphia by kind loans of money from two friends there, which was the foundation of my fortune, and of all the utility in life that may be ascribed to me, I wish to be useful even after my death, if possible, in forming and advancing other young men that may be useful to their country in both those towns. [Boston and Philadelphia.] To this end I devote two thousand pounds sterling of which I give one thousand thereof to the inhabitants of the town of Boston, Massachusetts,—and the other thousand to the inhabitants of the City of Philadelphia, in trust, to and for the uses, intents and purposes hereinafter mentioned and declared.

"The said sum of one thousand pounds sterling, if accepted by the inhabitants of the town of Boston, shall be managed under the direction of the selectmen, united with the ministers of the oldest Episcopalian, Congregational, and Presbyterian Churches in that town, who are to let out the same upon interest, at five per cent. per annum, to such young married artificers, under the age of twenty-five years, as have served an apprenticeship in the said town, and faithfully

[20] Green Bag, Vol. VIII, p. 5.

fulfilled the duties required in their indentures, so as to obtain a good moral character from at least two respectable citizens who are willing to become their sureties, in a bond with the applicants, for the repayment of the moneys so lent, with interest, according to the terms hereinafter prescribed; all of which bonds are to be taken for Spanish milled dollars, or the value thereof in current gold coin; and the managers shall keep a bound book or books, wherein shall be entered the names of those who shall apply for and receive the benefits of this institution, and of their sureties, together with the sums lent, the dates and other necessary and proper record respecting the business and concerns of this institution. And, as these loans are intended to assist young married artificers in setting up their business, they are to be proportioned by the discretion of the managers, so as not to exceed sixty pounds sterling to one person, not to be less than fifteen pounds, and, if the number of appliers so entitled should be so large that the sum will not suffice to afford to each as much as might otherwise not be improper, the proportion to each shall be diminished so as to afford to everyone some assistance. These aids may, therefore, be small at first, but, as the capital increases by the accumulated interest, they will be more ample. And, in order to serve as many as possible in their turn, as well as to make the repayment of the principal borrowed more easy, each borrower shall be obliged to pay, with the yearly interest, one-tenth part of the principal, which sums of principal and interest so paid in, shall be again let out to fresh borrowers.

"And, as it is presumed that there will always be found in Boston virtuous and benevolent citizens willing to bestow a part of their time in doing good to the rising generation, by superintending and managing this institution gratis, it is hoped that no part of the money will at any time be dead, or be diverted to other purposes, but be continually augmenting by the interest, in which case there may, in time, be more than the occasions in Boston shall require, and then some may be spared to the neighboring or other towns, in the said state of Massachusetts, who may desire to have it; such towns engaging to pay punctually the interest and the portions of the principal, annually, to the inhabitants of the town of Boston.

"If this plan is executed, and succeeds as projected without interruption for one hundred years, the sum will then be one hundred and thirty-one thousand pounds, of which I would have the managers of the donation to the town of Boston then lay out, at their discretion, one hundred thousand pounds in public works, which may be judged of most general utility to the inhabitants, such as fortifications, bridges, aqueducts, public buildings, baths, pavements, or

whatever may make living in the town more convenient to its people, and render it more agreeable to strangers resorting thither for health or a temporary residence. The remaining thirty-one thousand pounds I would have continued to be let out on interest, in the manner above directed, for another hundred years, as I hope that it will have been found that the institution has had a good effect on the conduct of the youth, and been of service to many worthy characters and useful citizens. At the end of this second term, if no unfortunate accident has prevented the operation, the sum will be four millions and sixty-one thousand pounds sterling, of which I leave one million sixty-one thousand pounds to the disposition of the inhabitants of the town of Boston, and three millions to the disposition of the government of the State, not presuming to carry my views farther."

A like provision was made for Philadelphia.

For one hundred years this will was observed without question, but in September, 1890, Albert D. BACHE, a great-great-grandson of the testator, attacked it in the Orphans' Court of Philadelphia, on four grounds,—(a) because the accumulation was for a longer time than allowed by common law; (b) because the legacy to Philadelphia vested longer after the testator's death than allowed by Pennsylvania statute; (c) because the use of the funds after the first hundred years was not a charitable use; (d) because testator's purpose could not be fulfilled, as the trustees had not realized the anticipated sum. The Court, on demurrer, dismissed the petition, in an opinion by Judge PENROSE.[21] Another attack was made through an equity proceeding by another descendant two years later, on the same grounds, but it failed also.

Whether the same result would have been reached if it had been altogether a case of first impression in Pennsylvania courts is uncertain, but the arguments in this FRANKLIN case fell upon trained ears. Although FRANKLIN died over forty years before Stephen GIRARD, the will of the latter[22] had caused the law concerning charitable trusts to be ventilated by WEBSTER, BINNEY and others be-

[21] See 27 Weekly Notes of Cases, 545; affirmed on appeal, 150 Pa. St. Rep. 437. Benjamin Franklin's will was not the only "waiting will" to be found. Not long ago, it is noted by a writer in the "Green Bag," an eccentric German died who directed that his estate amounting to about $10,000, be turned into money and be put out at compound interest for 200 years; and Count Hardegg, who died some fifteen years ago, left $300,000 to the University of Vienna on condition that it be put at compound interest for 100 years, when he computed it would amount to about $18,000,000. (X Green Bag, 162).

[22] Vidal v. Girard's Executors, 2 How. 143; Girard v. Philadelphia, 7 Wall. 1; Philadelphia v. Girard's Heirs, 45 Pa. 9.

fore FRANKLIN's descendants took their proceedings. This instrument, remarkable in some other respects, has been chiefly noted for its thorough-going provision for the foundation and endowment of Girard College. This was accomplished by a gift in trust to the Mayor, Aldermen and Citizens of Philadelphia, to build, equip and maintain this college along set lines; minute details are given as to the construction of the building itself, and the courses of instruction, and it is strictly enjoined that "no ecclesiastic, missionary, or minister of any sect whatsoever, shall ever hold or exercise any station . . . in said college; nor shall such person ever be admitted for any purpose, or as a visitor, within the premises."

The point was made by those attacking the will that the devise was void because the City of Philadelphia had no power to administer the trusts; also that it was void because the plan of education is anti-christian and therefore repugnant to the law of Pennsylvania; also that beneficiaries are too uncertain. WEBSTER contended in the United States Supreme Court that it was "a cruel experiment to be made upon orphans to ascertain whether they cannot be brought up without religion" and that "the idea was drawn from PAINE's AGE OF REASON." Justice STORY wrote the opinion upholding the will, saying that excluding all sectarians but leaving the instructors free to teach purest morality by all appropriate means was not against public policy, and would permit teaching the New Testament "where benevolence, the love of truth, sobriety and industry are irresistibly inculcated." The court also held that the charter of Philadelphia gives power for measures tending "to the suppression of vice, to the advancement of health and order, and to the promotion of trade, industry and happiness"; this is broad enough to authorize administration of this trust. The beneficiaries were easy to find, too.

The will of the late Samuel J. TILDEN failed to meet the requirements for a charitable gift in that under the limitation over to the Tilden Trust the gift did not necessarily vest by force of the will, on the happening of the event,—namely the incorporation of the trust. The corporation to be formed took nothing by virtue of the will. The estate was vested in the trustees, or was intended to be, and so to remain until by their discretionary action, if at all, the gift should be conveyed to the corporation.[23] As this is a noted instance of the fallacy that a lawyer can draw his own will it is perhaps proper to give a short synopsis of the case reported as *Tilden* v. *Green*.[23a]

[23] Remsen on Wills. Ch. IX § 4.

[23a] 130 N. Y. 42 (1891).

Samuel J. TILDEN died in 1886, leaving a will. The defendants BIGELOW, GREEN and SMITH, were by the will appointed executors. This action was brought by a nephew, George H. TILDEN, to obtain a construction of the will, of which certain articles were assailed. One of them gives the residue of the estate to the executors and trustees for a period not exceeding two lives in being, those of a niece and a grandniece; another directs the executors and trustees, as speedily as possible, to obtain the incorporation of the Tilden Trust to establish and maintain a free library and reading room in New York City, and to promote such scientific and educational objects as the trustees may designate, and instructs the trustees to give the residue, or "so much as they deem expedient" to that incorporated trust. Some detail is given as to the incorporation, and then it is provided that if the trust shall not be incorporated or if the trustees for any reason see fit not to convey the residue to it, then the testamentary trustees shall "apply the rest, residue and remainder . . . to such charitable, educational and scientific purposes as in the judgment of my said trustees will render the said rest, residue and remainder of my property" most widely beneficial to mankind.

The trust was incorporated and the trustees made a deed to it of all the residue. This was attacked on the ground that the broad power given the testamentary trustees was invalid as there were no parties who could enforce the trust. The court distinguishes the case from that under which the Roosevelt Hospital endowment was upheld,[24] saying that was a gift direct to the hospital to be incorporated, while this was an absolute gift to the testamentary trustees with power to give to the Tilden Trust if they thought best.[25] This decision resulted in a reconstruction of the statutes of New York,—a 'recall of the judicial decision,' if you please,—by the addition of a new law providing that a charitable gift otherwise valid should not be invalid by reason of uncertainty of beneficiaries.[26] This has since been followed by similar statutes in other states.

Turning somewhat abruptly to the mammoth estates of today, we find specimens of will-draughting that are models in their technique. They seem to divide themselves into the very long and the extremely short. Of the latter that of John W. MACKAY of the Postal Telegraph Company, probated in 1902, covers one sheet which is largely

[24] Burrill v. Boardman, 43 N. Y. 254 (1871); Charles O'Conor was of counsel for the Hospital.

[25] James C. Carter was one of the counsel upholding the will: Joseph H. Choate one of those opposed.

[26] N. Y. Laws of 1893. Ch. 701.

taken up with an enumeration of the powers of executors; it is made under the law of Nevada and declares that all of his estate is community property of his wife and himself, and gives his son all the interest therein of which testator can make testamentary disposition. Even more simple is the will of Edward H. HARRIMAN, the disposing clause of which contains only forty-eight words.

On the other hand we have public spirited wills of great length. Prominent among these is that of Marshall FIELD, which with a republication codicil after his marriage, covers more than sixty printed pages; beside the public gifts, it is noteworthy because of the shrewd way in which the testator protects his principal beneficiaries by dividing the trust gifts among various trust companies.

Another instrument of public interest is the will of John S. KENNEDY, [27] of New York, dated in 1909, which made forty-six gifts of considerable specific sums to educational institutions and charities, and in addition made residuary bequests to others.

Another of these long wills, which is both interesting and instructive, is that of Joseph PULITZER, proved in 1911. This challenges attention both because of the broad public spirit of the testator, and because of the careful planning of the instrument itself. The gifts include $20,000 for distribution among the employees of the "New York World", and a like amount for those of the "Post-Dispatch" of St. Louis; a bequest of $250,000 to Columbia College for the creation of scholarships benefiting needy, would-be students; the confirmation of the gift of $2,000,000 to Columbia College for the creation and maintenance of Schools of Journalism; and a gift to the Metropolitan Museum of Art of $500,000, the income of which is to be applied to the purchase of works of art. There are various other bequests for matters of public interest, including one of $500,000 to the Philharmonic Society of New York City; another of $50,000 for the location of a fountain at some suitable place in Central Park; another of $25,000 for the purpose of erecting a statue of Thomas JEFFERSON in the City of New York. These two latter are mentioned here as affording a contrast to the provisions in the will of the late James SCOTT of Detroit, to which reference is made hereafter.

This PULITZER will adopts an ingenious method for keeping control of the two newspapers, which were the pride of the testator, in the family as long as possible. It creates a trust in which is placed all of the stock of the newspapers mentioned, and which continues during the life of each of the two youngest sons of the testator,

[27] Died October 31st, 1909.

him surviving, with a clause substituting the youngest grandsons in case either son should predecease the testator. The period of two lives in being thus limited is made the trust term; during this trust term the stock is held in trust for the three sons of the testator, with the exception of one-tenth. These sons, or their male descendants, receive the income of the proportionate parts held in trust for them during the continuance of the trust term. Upon the expiration of the trust term, the stock of the companies held for the benefit of the sons shall be turned over to them, and if they die before that time the remainder is distributed among their male descendants. The remaining one-tenth of the stock is held by the trustees to distribute its income during the continuance of the trust term among the principal editors and managers of the two newspapers before mentioned, and upon the expiration of the trust term to be sold by the trustees to the principal editors or managers of the "World" and "Post Dispatch", considered by the trustees the most deserving in point of ability and integrity.

Of all American wills that of the late J. Pierpont MORGAN stands pre-eminent in many respects.[28] As an example of construction and draughting, it ranks with the best. It is, however, the evident spirit of the man making the will that brings the instrument into bold relief. The testator shows his appreciation of the solemn dignity of the occasion by a firm expression of religious belief in the beginning of the will, next makes generous provision for his immediate family, relations, friends and servants, then makes some allusions to charities, and finally in its short and unassuming Article XXXII disposes of his wondrous art collections by saying "it has been my desire and intention to make some suitable disposition of them . . . which would render them permanently available for the instruction and pleasure of the American people. Lack of the necessary time to devote to it has as yet prevented my carrying this purpose to effect . . . Should either my son or my grandson succeed to the ownership of these collections, I hope he will be able to make permanent disposition of them or of such portions of them as he may determine which will be a substantial carrying out of the intentions which I have thus cherished." The unaffected and sincere statement of faith in God and the unassuming allusion to the purpose to help in the uplift of the American people would stamp the testator as an unusual and noteworthy man even if we knew nothing else of him.

[28] Admitted to Probate in New York, April 22nd, 1913.

Michigan has also furnished wills in recent times which are worthy of study, as dealing with the disposition of large properties. Of these, the will of Charles H. HACKLEY of Muskegon, made in 1903, stands out prominently, as it makes public bequests of $775,000 for public institutions in Muskegon, such gifts taking immediate effect, and provides further residuary gifts to the city which will increase the amount eventually to something like $2,000,000.

Another Michigan will is that of Arthur HILL of Saginaw, who died in 1909, which makes large gifts to public institutions in Saginaw, and deals liberally with the University of Michigan.

The city of Detroit has not fared so well as some of the other large cities in the matter of gifts, nor has it fared so well as do Muskegon and Saginaw. For many years the gift of the late Chauncey HURLBURT, providing for the decoration and upkeep of a Water Works Park, stood alone as a public bequest of any size. By the will of James SCOTT, however, who died in 1910, a large sum will be realized by the city, the disposition of which is controlled by a peculiar provision. This has caused much comment and reads as follows: "All the remainder of my estate I devise and bequeath to the city of Detroit; with the proceeds thereof said city shall build a fountain on the island of Belle Isle; such fountain shall be built in accordance with a plan approved by my executors; said fountain shall be called the James Scott Water Fountain. There shall be placed on said fountain a life-size statue of myself, made in accordance with the direction of my executors". Another peculiar provision in this will is one requiring that the executors build a tomb on the testator's cemetery lot, which tomb shall have places for ten bodies; and then directing that the executors shall have placed in that tomb the remains of seven individuals, who are specified. It would seem that Mr. SCOTT did not like crowding.

A cursory article of this nature will not permit of any lengthy discussion of the many wills in which the purpose of the testator led to odd results through the operation of law. Two instances, which have come to the notice of the writer will suffice as examples.

One of them is shown in the Connecticut reports, when an executor was called to account about twenty-five years after his testator's death, and asked to divide the estate. He replied that the will provided that certain specified nephews of the decedent were to receive sums mentioned in case they went to college, and other like sums if they took degrees; further, that if brothers of the testator had other sons going to college they should receive like

amounts. As it was shown that the nephews specified were, at the time of the suit, over forty-five years old, and the two surviving brothers were, one a widower and the other a bachelor, and both nearly eighty, the court concluded that the executor need not keep the property in his hands longer to fulfill the wishes of the maker of the will.

The other is that set forth in the case of *Millsaps* v. *Shotwell*.[29] One of the sons of the testator, a young man, had deserted from the army during the Civil War and was known to be very dissipated. In 1872 the father gave all of his large landed estate to his other two sons reciting, however, that if the absent son, whose whereabouts were unknown, should be living and return and for five years continuously become and be a temperate and prudent man, he should have his interest in the estate. He came back years afterwards, and settled near his other brothers, and was even more dissipated than before, indignantly repudiating any suggestion of reformation. His brothers deeded him part of the land, and he improved it and borrowed money on it and for more than twenty-five years lived a very dissipated life until everyone had forgotten the terms of the will and much of the land had been mortgaged and sold. Suddenly he announced that he was going to quit and had "sworn off" from liquor. Everyone laughed at his resolution, but strangely enough, he stuck to it for five years, brought suit and recovered his one-third interest in a magnificent delta plantation.

Taking it all in all the changes that death makes in property disposition are worthy of much note, whether we try to follow the curious whims of an eccentric man nearing his end, or the wise provisions of a farsighted financier;; all simply serve to emphasize the short range of human vision trying to peer into the future.

SIDNEY T. MILLER.

DETROIT, MICHIGAN.

[29] 76 Miss. 923.